

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Edward Gibbs pro-se,
Appellant

v.
Warden Thomas Carroll
Appellee,

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o CIV. ACT. NO: 07-36-JJF
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Motion for Evidentiary Hearing

comes now, the appellant, Edward Gibbs pro-se, and moves
this Honorable Court for a Evidentiary Hearing.

Appellant was found guilty by a all white Jury of Escape After
conviction, Judge Richard Stokes presided, Paula Ryan Prosecutor,
Appellant was represented by Carole Dorn Public Defender 10-30-2003.
Appellant was sentenced 12-19-2003, 20 years as Habitual criminal,
Appellant filed motion to dismiss counsel before his sentencing,
Appellant has exhausted his appeal procedures in accordance
to Delaware appeal process and Due process, Appellant has never
been afforded a Evidentiary Hearing in the lower courts.

Appellant is requesting that this court afford him a Evidentiary
Hearing, based on the allege claims in violation of Appellant's
8th and 14th Amendment of the U.S. Constitution and the
Record of 12-19-2003 which will be presented as Appellant's
Exhibits, also Appellant is entitled to a Evidentiary Hearing
in accordance with Estep V. Ornoski: 431 F.3d 1158 (12-16-2005)
if appellant, can show that; 1. The merits of the factual
dispute were not resolved in the state court hearing;

2. The state factual determination is not fairly supported by record as a whole; 3. The factfinding procedure employed by the state court was not adequate to afford a full and fair hearing; 4. There is a substantial allegation of newly discovered evidence; 5. The material facts were not adequately developed at the state court hearing; 6. For any reason it appears that the state tries of fact did not afford the Habeas applicant a full and fair hearing;

Earp 431 F.3d 1169 citing Townsend 335 U.S. 740 If the defendant can establish anyone of those circumstances, the the State courts decision was based on an unreasonable determination of the facts and the federal court can independently review the merits of that decision by conducting an evidentiary hearing.

Appellant cites, Dennis Williams v. Frank Griswold 743 Fed 1544 [13]

It is well established that the standards governing the sufficiency of Habeas corpus petitions are less stringent when the petition is drafted pro se and without the aid of counsel. End 23-

1. Appellant claim that he was denied due process of Equal Protection
 Appellant was sentenced as a Habitual Criminal, the Prosecutor Paula Ryan stated in open court that Mr. Gibbs is not entitled to the same plea offers that are given to other people; Appellant was not offered a plea bargain only to plead Guilty. Appellant brings to the court attention Transcripts pages from 12-14-2003 Exhibit A pg. 34 in support of Appellant claim. Also Appellant will use as a exhibit to prove the Due process Violation of Equal protection; Joseph Sanders had 7 Escapes and was prosecuted by Paula Ryan and represented by Carole Dunn public defender 2004; Sanders was sentenced as a Habitual Criminal to 3 years. Appellant received 20 years,

Appellant received a disproportionate sentence compared to Sanders whose escape record and criminal history is just as bad as Appellant. See State v. Stewart 791 A 2d 143 (Md 2002)

Proportionality review should be guided by objective criteria; including:

- (i) The gravity of the offense and the harshness of the penalty;
- (ii) The sentences imposed on other criminals in the same jurisdiction;
- (iii) The sentences imposed for commission of the same crime in other jurisdictions.

2. Appellant next allege that the Superior Court created a conflict when the Judge told the Appellant to step aside Pg. 14 Exhibit B 12-19-2003, left Appellant without the aide and proper assistance of counsel. See, U.S. v. V. Gonzalez 113 F.3d 1026; consequently [Gibbs] was denied effective assistance at the [sentencing] hearing". See Pg. 1028 113 F.3d [5] when the court invited Dunn to contradict her client and to undermine his veracity, Gibbs "in effect" was left to fend for himself, without representation by counsel....

3. Appellant next alleges that the Superior Court defined the Charge & Escape After Conviction as a violent felony, Transcript Pg. 61 Exhibit C. Appellant states that the legislative intent has been misconstrued by Judge Stokes; 11§1253 Escape After Conviction Class D felony; A person shall be guilty of escape after conviction if such person, after entering a plea of guilty or having been convicted by the court, escapes from a detention facility or from the custody of the Department of Health and Social Services or the Department of Correction. See Exhibit C-1 Special Escape Category Benchbook 2003. Pg. 91

Appellant also cites for his Exhibit C-2 U.S.V. piccolo 441 F3d1084 pg. 1086 The district court expressed doubt whether Piccolo's escape could be deemed a crime of violence, noting, "I don't view a walk away from the Clark center as in the same category as classic escapes obviously?" See [1] [2] a crime of violence is defined as any offense under Piccolo he was serving time for Bank Robbery.

Appellant was serving time for Violation Probation; order #6-12-0243 that's the same conviction Judge Stokes sentenced me to 20 years as a Habitual criminal and probation. See Appellant exhibits C-2-C-3 Appellant informed the court that he was a probationer at the time of sentencing. To define the violence of Escape in Delaware Title 11§1253 classifying, class B, Felony; Class C provides that if the defendant uses force, or the threat of force against another person or possessed a deadly weapon at the time of escape it shall be a class C Felony, if the defendant inflicts injury upon another person during the escape or from the time of escape until such person is again in custody, it shall be a class B Felony. See pg. 1087 U.S.V. Amars 68 F.3d 1222, 1224-26 (9th Cir. 1995) we applied the categorical approach to current conviction under 18 U.S.C. 35924(c)(3)(B). A categorical approach is needed in Appellant case, Appellant has been denied 8th and 14th Amendment to the U.S.C.A. by sentencing Appellant to a 20 Year Sentence while others in the same jurisdiction has received lesser sentence for example: Appellant will start with Newcastle County; Charles Cobb 8 Years Habitual Criminal Escape after conviction; Williams v. State 2004 12 years Habitual criminal; Also, See; Appellant Exhibit C-4 People get less time for murder in Newcastle County. Now Appellant states Kent County Habitual criminal Sentence; Flamer v. State 8 Years Woodfin v. State 8 years both Escape 2001.

Appellant will name defendant's that he named on 12-14-03

From Suwanet County & Defendant's Sentences under Habitual criminal
 Joseph Sanders 7 Escapes 2004 3 years, Holden v. State 1999 8 years
 Charleston v. State 1997 8 years, Faircloth v. State 8 years 1987.

Appellant States this is cruel and unusual punishment a violation of
 8th Amendment U.S.C.A., this 20 year sentence is greatly disproportionate
 related to the conduct being punished. See Crossby v. State 824 A.2d 894
 (2003) citing Harmelin v. Michigan 411 U.S. 2680, Solem v. Helm
 103 S.Ct. 3001 all cases have been reversed & remanded.

Appellant States that under Buckingham v. State 482 A.2d 327
 (Del.Super. 1984) under the subsection here invoked, three (3) Separate
 convictions are required, each successive to the other; with some
 chance for Rehabilitation after each sentencing.

In sentencing Appellant See Exhibit C-5 pg. 63 12-14-03 sentencing
 transcript Judge read Appellant criminal history. Appellant cites
 Hall v. State 473 A.2d 352 to reverse Habitual offender penalties for
 individuals who were not rehabilitated.

Wherefore Appellant having presented a colorable claim in accordance
 to Earp v. Ornastki 431 F.3d 1158 (3-16-05) providing at least 3 of the
 claims required and supporting each allegation with transcript Appellant
 request an Evidentiary Hearing in the interest of Justice.

Date 8th March 31, 2008

Edward Gibbs pro-se
Edward Gibbs pro-se
 P.O. # 1181 Paddock Rd,
 Somers Del, 19977

Certificate of Service

I, Edward Gibbs, hereby certify that I have served a true

And correct cop(ies) of the attached: Motion Evidentiary Hearing

upon the following

parties/person (s):

TO: Clerk vs District court
Lockbox 18 844 King St.
wilm Oct, 1980

TO: James Wakely
Dept. Justice Carvel
State off. bldg. 820 N. French
St.
wilm. Oct, 1980

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 1st day of April, 2008

Edward Gibbs

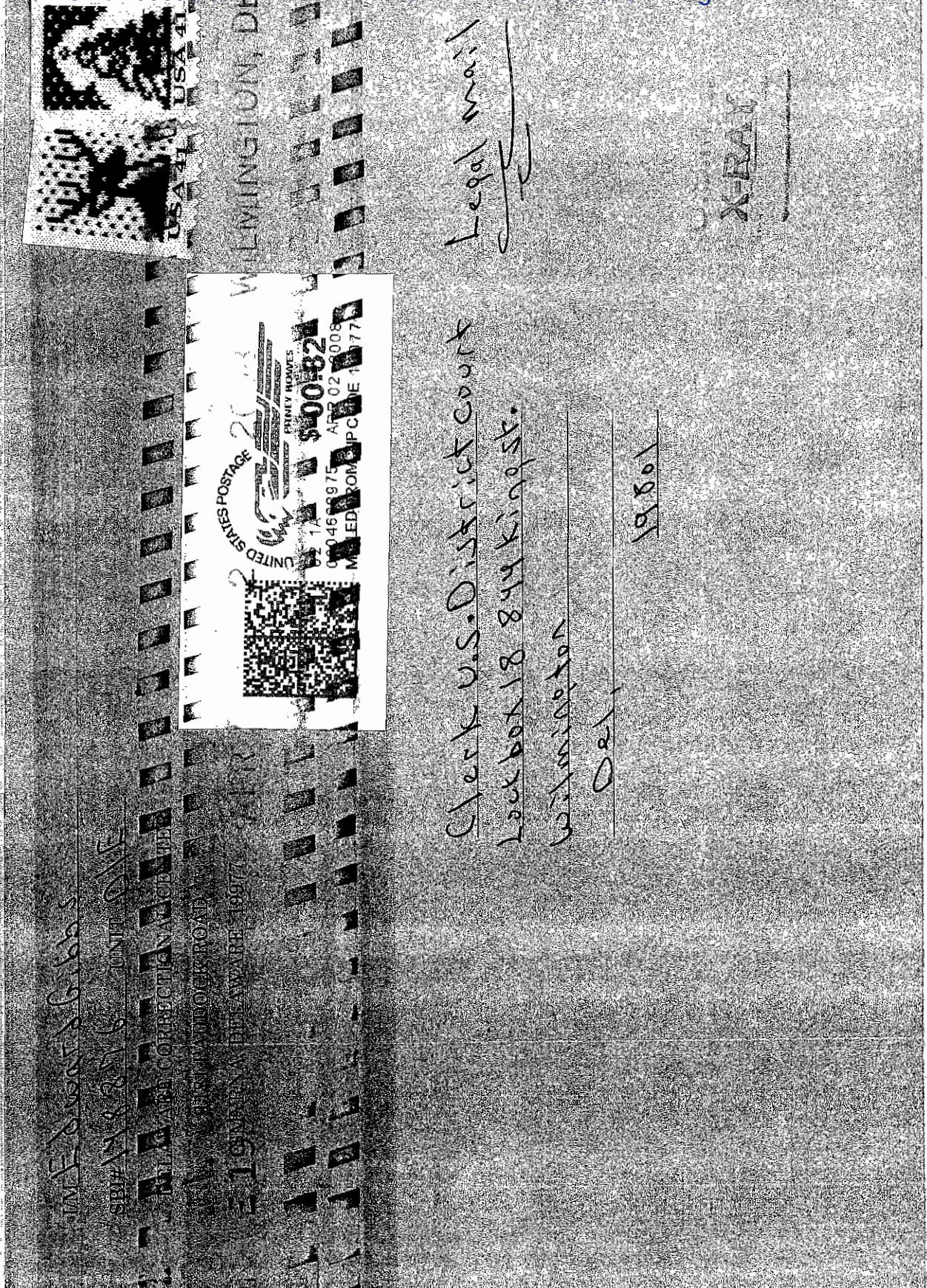


EXHIBIT D

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1 So Ms. Dunn saying to him at some point, as
2 he said during trial, "oh, I get it," she got it.
3 She knew, because we discussed what Mr. Gibbs wanted
4 the State to offer him. Mr. Gibbs is not entitled to
5 the same plea offers that are given to other people
6 because each case is handled as an individual case.
7 There are policies in our office about how we handle
8 cases of Level 4 escapes and who are habitual
9 offender eligible, and I made Ms. Dunn aware of
10 those, of that situation.

11 That's where we were with Mr. Gibbs. There
12 was not a discussion of, oh, you know, I'll offer him
13 this or I'll offer him that. The only discussions we
14 had was, you know, perhaps Mr. Gibbs should, you
15 know, maybe have a bench trial rather than a jury
16 trial, because the arguments that he wants to make --
17 and this is all before a jury. The arguments that he
18 wants to make about this charge, he's not going to
19 make in front of a jury because it is legal argument.

20 We had a discussion the morning of trial,
21 before the trial began, and it was explained to
22 Mr. Gibbs that he couldn't present the arguments
23 about whether this was or wasn't an escape after

KATHY S. PURNELL
OFFICIAL COURT REPORTER

1 THE COURT: I am asking you a straight
2 question, is there anything else you want to say
3 about Ms. Dunn?

4 THE DEFENDANT: No, I'm not saying nothing.

5 THE COURT: Step aside just for a minute.

6 Now, Ms. Dunn, he has made some serious accusations
7 about you.

8 MS. DUNN: Yes, he has, Your Honor.

9 THE COURT: Can you respond to them, please?

10 MS. DUNN: Well, Your Honor, this is a
11 sentencing hearing. Is this an appropriate forum?

12 THE COURT: You had better believe it is
13 appropriate.

14 MS. DUNN: I have a list, Your Honor, of the
15 meetings and the work that I've done on this case. I
16 can tell the Court that Mr. Gibbs had an initial
17 intake interview not with me, but with our
18 investigator back in June. He waived his preliminary
19 hearing on the 18th, and during which he spoke to
20 Mr. Moore of our office about his case. He received
21 a client letter that I normally send out to the new
22 clients, on June 19th. Actually, that was sent on
23 June 23rd. Excuse me.

KATHY S. PURNELL
OFFICIAL COURT REPORTER

Exhibit C.

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1 one year, nine months, suspended for two years Level
2 3 probation.

3 Now, as to the escape after conviction,
4 03-06-0519, escape after conviction is the triggering
5 felony. By law, escape after conviction is defined
6 as a violent felony. You have a criminal history.
7 You have a history that goes back to when you were a
8 juvenile. I am not going to dwell on the juvenile
9 part of it. But going back to 1979, you have a
10 criminal trespass disposition in the Court of Common
11 Pleas, November 24, 1979, disorderly conduct. They
12 put you in jail there for 60 days.

13 March 18, 1980, unauthorized use of a motor
14 vehicle, criminal trespass, committed a burglary
15 second, theft. You got six months imprisonment on
16 each charge in the Court of Common Pleas.

17 March 14, 1980, Court of Common Pleas,
18 theft, violation of probation. You had 60 days
19 imprisonment, as well as three months imprisonment.
20 You were fined for offensive touching on December 18,
21 1981 in the Court of Common Pleas.

22 In the Superior Court, Sussex County, you
23 were sentenced on a rape in the second degree, which

KATHY S. PURNELL
OFFICIAL COURT REPORTER

Exhibit C-1**Special Escape Category**

Due to the peculiar nature of escape charges, which may be considered as deserving aggravated punishment even though they are primarily non-violent in nature, the following recommendations are presented:

11-1251 Escape 3 -Misdemeanor A	UP TO 1 MONTH	LEVEL V
11-1252 Escape 2 -Felony G	UP TO 3 MONTHS	LEVEL V
11-1253 Escape after Conviction		
Felony D	UP TO 2 YEARS	LEVEL V
Felony C (Threat of Force or Possession of a deadly weapon)		
1 YR TO 3 YRS	LEVEL V	
Felony B (Inflicted Injury)	2 YRS TO 5 YRS	LEVEL V

ESCAPE FROM LEVEL IV FACILITY

(Applies to all Half-Way House and Residential Treatment facilities)

1st offense	Level V for 30 days (4204K)
2nd offense	Level V for 90 days (4204k)
Third & subsequent Offense..	Level V for 180 days (4204k)

Presumptive penalty for a first escape from Home Confinement is a lateral assignment to a Half-way House facility.

Sentencing Orders and worksheets should reflect the status as a Level IV Escape.

Policy 31: Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge. Persons charged with such escapes should not be released on bond.

Change (6/2003) Amends §1253, Title 11 of the Delaware Code by striking the phrase "from a detention facility" from that section and substituting in lieu thereof the following: "from a detention facility or other place having custody of such person".

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offender may also leave their residence for an emergency as defined by the program.

The minimum contact expectations of Home Confinement offenders shall be two face-to-face contacts per week, at least one of the contacts in the community. These contacts shall be in addition to a minimum daily home confinement period of nine (9) hours per day. Contact requirements and Home Confinement hours shall be set at an increased level as appropriate for each offender. The minimum contacts and hours are appropriate for offenders who have demonstrated compliance and stability with the program.

Due to the serious risk presented by Level IV offenders and the potential for damage to the electronic monitoring equipment, Home Confinement staff should respond to violations in a time frame as immediate as is appropriate for the nature of the violation. This response may include immediate arrest. The potential threat posed by the offender to the community, staff, and/or a specific victim(s) shall always be considered in the arrest decision.

2.(1) HALFWAY HOUSE- Offenders sentenced to a Level IV Halfway House shall be held in an accountable partial confinement residential program. These offenders shall be afforded the opportunity to prepare for the responsibility of community life by finding employment. They will also be able to utilize existing resources to assist themselves educationally, psychologically, and socially to change those conditions which brought them into the criminal justice system. Level IV Halfway Houses will utilize a phased system of progressive movement to encourage positive conduct. This phase system is designed to monitor offender conduct and lead to full community placement.

(2) -Negative conduct shall be responded to by a limitation of -program participation up to and including movement to full

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- incarceration awaiting court action. In the event an offender's conduct is disruptive to the point where the offender is a threat to the community or to the orderly operation of the Halfway House, emergency action can be taken to detain the offender at the nearest correctional facility while court action is initiated.

(3) - Level IV offenders have been defined as probationers for due process procedural consideration. The exception is for Level IV offenders leaving or failing to return to a Halfway House without authorization. Under these circumstances, a charge of "Escape" is to be filed immediately.

3. RESIDENTIAL SUBSTANCE ABUSE TREATMENT- Offenders sentenced to Level IV-"treatment" shall generally be sentenced to one of the following:

- a. A specific program which is defined and operated as a Level IV residential treatment facility.
- b. An existing treatment program which admits Level IV offenders and whose program standards are accepted as complying with the requirements of the Level IV sentence.

Alternative treatment programs may be substituted for specifically ordered Level IV treatment programs with approval from the sentencing authority.

B. Program guidelines

1. Due to the high level of risk and needs presented by Level IV offenders, suitability for the ordered program must be a consideration. If the specific circumstances of an offender interferes with their successful participation in or the overall operation of the program, the sentencing authority shall be contacted. The circumstances and a recommendation for alternative placement may be submitted. Note should also be

Exhibit C-5

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1 supervision. Possession of cocaine, you got a year
2 suspended for probation. On October 30, 1995, you
3 were initially charged with escape after conviction.
4 On November 2, 1995, you did a plea to escape in the
5 third degree, and you got 30 days imprisonment under
6 4204(k). On December 15, 1995, you were found to be
7 in violation of probation on an unlawful sexual
8 intercourse third degree charge and assault second
9 degree charge, and you received jail time. After
10 doing six months, the balance was suspended for
11 different levels of probation.

12 There was a violation of probation on
13 November 14, 1997. Violation of probation February
14 1998; referred to the Key Program. June 4, 1999,
15 violation of probation. That was appealed and that
16 was the one that referenced that the violation of
17 probation was done without the presence of Mr.
18 Callaway. It came back from the Supreme Court. They
19 said that you have a lawyer present. When it came
20 back from the Supreme Court, you were sentenced;
21 found to be more likely than not, but you were not as
22 good as expected while you were on probation, and you
23 got your jail time reimposed, and after a period of

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